IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No.6655 of 1995

Tamil Nadu Corporation for
Development of Women Co-operative
Industrial Estate,
Sivagasi (West),
Kamaraj District. ..... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Madurai.

2. U.Marappan
3. R.Govindaraj
4. V.Kaliselvan
5. P.Balakrishnan
6. K.Shanmugham ..... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of certiorari as stated therein.

For Petitioner : Mrs.T.Kokilavani

For Respondents 2 to 5 : Mr.G.K.R.Pandian

For R6 : Mrs.R.Vaigai

:ORDER

Petition is filed to issue for a writ of certiorari to call for the records of the first respondent in C.P.No.5 of 1992 dated 23.2.1995 and quash the same.

2. Respondents 2 to 6 herein filed a claim petition in C.P.No.5 of 1992 under sec.33C(2) before the first respondent Labour Court on the basis that they were entitled to salary as per the recommendations of IV and V pay commission and claimed arrears on that basis. The petitioner herein contested the case on the ground that it is a company incorporated under the provisions of Companies Act which is not a Government Department. It is also the case of

the petitioner that respondents 2 to 6 were originally paid consolidated wages and after implementation of the Payment of Minimum Wages Act, salary was paid to them. The Labour Court allowed the claim by its order dated 23.2.1995. Aggrieved by the said order, the Corporation has filed the present writ petition.

3. Learned counsel Mrs.T.Kokilavani appearing for the petitioner submitted as follows:-

The claim of respondents 2 to 6 cannot be agitated under sec.33C(2) of the Industrial Disputes Act. The said section is purely one of executory in nature, as such, the disputed questions cannot be agitated. Until respondents 2 to 6 had pre-existing right the application under section 33C(2) is not maintainable. Respondents 2 to 6 had no pre-existing right to maintain a claim under section 33C(2) as their claim is based on the recommendations of IV and V pay commission. Respondents 2 to 6 have raised an Industrial Dispute in I.D. No.55 of 19 92 before the Industrial Tribunal in this regard and until the said I.D. was disposed of in their favour, respondents 2 to 6 would not have a pre-existing right to make the said claim. In the absence of pre-existing right, the workmen have only recourse to sec.10(1) of the Industrial Disputes Act. Under sec.10(1) of the Industrial Disputes Act, respondents 2 to 6 filed I.D.No.55 of 1992 which was pending. Hence, the impugned order is unsustainable in law. The claim of equal pay for equal work on par with the Accountant and Driver is also untenable, hence, the impugned order passed by the first respondent Labour Court has to be quashed.

4. Learned counsel Mr.G.K.R.Pandian appearing for respondents 2 to 5 submitted as follows:-

One Paulraj, Accountant and K.Subramanian, Driver who were working in the petitioner Corporation have been getting the benefits under the recommendations of IV and V pay commission. The mode of recruitment of the said persons is similar to that of these respondents which was rightly substantiated by Exs.W1 and W2 that the said persons were signing in the very same attendance register signed by these respondents. Under Ex.W7, revised wages were fixed by the Managing Director of the petitioner's Head Office. When the discrimination was pointed out by these respondents, the management started maintaining a separate register for the said Paulraj and Subramanian. Ex.W11 project report marked by these respondents show that the petitioner is having branch office at Sivakasi. Sec.33C(2) of the Industrial Disputes Act was enacted for the purpose of enabling the individual workmen to implement, enforce or execute their existing individual rights against the employers without being compelled to have recourse to section 10 of the Industrial Disputes Act. The Labour Court has got jurisdiction to interpret an award or settlement of which the workmen have right and benefits provided by the statute or scheme which is done by the first respondent in the claim petition under sec.33C(2) of the Industrial Disputes Act. The Labour Court is vested with the jurisdiction under sec.33C(2) of the said Act to decide the right already existing when it was denied by the employer. I.D. No.55 of 1992 was filed by the Press Workers' Union and it was referred by the Government of Tamil Nadu in G.O.(D) No.471 dated 19.5.1992 for a charter of demands and that does not include the difference of wages and difference in bonus as per the recommendations of IV and V pay commission. The averments that same relief was sought for in I.D.No.55 of1992 is denied as baseless. The petitioner has misconstrued the claim of these respondents as if they claimed equal pay for

equal work. Indeed they have claimed the benefits under the recommendations of IV and V pay commission, hence, the writ petition has to be dismissed. The learned counsel Mr.G.K.R.Pandian relied upon the following decisions:-
i) CENTRAL BANK OF INDIA v. RAJAGOPALAN (1963(II) LLJ 89) wherein the Honourable Apex Court has held that
" On a fair and reasonable construction of Sub-sec.(2) of S.33C it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the labour court. Before proceeding to compute the benefit in terms of money, the labour court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the labour court can proceed to compute the value of the benefit in terms of money; but f the said right is disputed, the labour court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the labour court answers this point in favour of the workman that the next question of making the necessary computerisation can arise. The opening clause in Sub-sec.(2) of S.33C "when any workman is entitled to receive from the employer any benefit" does not mean "when such workman is admittedly or admitted to be entitled to receive such benefits." If such construction is adopted, it would necessarily mean that it would be at the opti on of the employer to allow the workman to avail himself of the remedy provided by sub-sec.(2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the labour court to entertain the workman's application. The claim under S.33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of that right and such an enquiry must be held to be incidental to the main determination which has been assigned to the labour court by Sub-sec.(2). As Maxwell has observed, "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution"... Hence it must be held that S.33C(2) takes within its purview cases of workmen who claim that the benefit on which their claim is based is disputed by their employers."

In this case, the Honourable Apex Court has held that the word " benefit" used in sec.33C(2) of the Industrial Disputes Act is not confined merely to non-monetary benefits which could be converted in terms of money, but it takes in all kinds of benefits which may be monetary as well as non-monetary.
ii) DINARAM CHUTIYA v. KAKAJAN TEA ESTATE (1963(II) LLJ 26) wherein the Honourable Apex Court has held that
" On the other hand, Goswami for the respondent argued that if the letters of appointment in the case if some of the appellants which have been filed on the record and on which they rely are examined, it would be found that the figures in Annexure A are wrong and he urged that the finding recorded by the High Court as well as the authority on this question is absolutely right. His case was that under the subsequent circular of 1954, basic wages as well as dearness allowance had been increased and so, the reduction or abolition of the servant allowance did not, in the least prejudicially affect the totality of wages of the employees in any case. Besides, he strenuously contended that it was not open to the appellants to challenge the correctness of the finding

made by the authority in their petition under Article 227 and if that is so, it would not be open to them to take that point even before us. In our opinion, this latter contention is well-founded and must be upheld. It may be that the evidence available on the record is not very satisfactory and the pleas taken by the respondent on this part of the case were not as clear or specific as they should have been; even so, we do not think that we can examine the correctness of the said finding. Therefore, without expressing any opinion on the merits of the finding, we hold that the appellants are precluded from disputing the validity of that finding, and so, no question arises as to the contravention of Section 23 of the Act."

In this case, the Honourable Supreme Court has held that that the finding given by the Labour Court cannot be challenged under Article 227 of the Constitution of India.

iii) EAST INDIA COAL CO. v. RAMESHWAR (AIR 1968 SC 218) wherein the Honourable Supreme Court has laid down the proposition in para 5 that "It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Since the scope of sub-section 2 is wider than that of sub-section 1 and the sub-section is not confined to cases arising under an award, settlement or under the, provisions of Chapter VA. there is no reason to hold that a benefit provided by a statute or a Scheme made thereunder, without there being anything contrary under such statute or Section 33-C(2), cannot fall within sub-section 2. Consequently, the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed must fall under sub-section 2 and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the claim arose under the said scheme or because the benefit was monetary or because it involved any substantial question between the Company and the workmen must, in view of the said decisions, fail. "

In this case, the Honourable Supreme Court has held that the Labour Court has jurisdiction to interpret an award or settlement on which workmen's right rests and also the benefit provided by statute or scheme made thereunder falls within sec.33C(2) of the Industrial Disputes Act.

iv) TAJ MAHAL CAFE PRIVATE LTD. v. LABUR COURT HUBLI (1970(II) LLJ 5 1) wherein the Honourable Supreme Court has held that "... if the money or the benefit is claimed by a workman on the basis that the right already exists and the existence of that right is denied, it is competent for the Labour Court in proceeding under Section 33-C(2) to decide whether the right does or does not exist. In the present cases, the amount that was claimed by the five workmen was based on their admitted contract of employment and on the further plea that, their suspension being unjustified, they were entitled to their wages in accordance with their conditions of service. It was not a case where the workmen wanted a right to be granted to

them by the Labour Court which is a relief that cannot be claimed in proceeding under Section 33-C(2) and may be claimed by raising an industrial dispute. The Labour Court, in these circumstances, was competent to arrive at the finding that the suspension of these five workmen did not extinguish their right to receive their wages for the period of suspension because of the conditions of service and, thereafter, compute the amount claimed by them. This ground, therefore, fails."

In the above case, the Honourable Apex Court has held that the Labour Court, under sec.33C(2), is competent in determining the amounts and directing payment in accordance with the conditions of service.

5. Learned counsel Ms.R.Vaigai appearing for the 6th respondent has submitted that the claim made by the sixth respondent was based on the pre-existing right decided on the recommendations of IV and V pay commission. The learned counsel Ms.Vaigai relied on the following decisions:-

i) SAHU MINERALS LTD. v. PRESIDING OFFICER (1975(2) LLJ 341) wherein the Honourable Apex Court in para 9 has held that

"It does not say that all questions arising out of retrenchment of workmen and closure of establishments have to be decided by Industrial Tribunal. Logically if the contention is to be accepted, even if the question of retrenchment is not disputed the Labour Court will not be competent to decide the question of compensation payable in a case of retrenchment because it raises a question of jurisdiction. This entry should therefore be held to refer to cases where the right to retrench workers or to close an establishment is disputed and that question is referred for adjudication to the Industrial Tribunal. In that case the tribunal will be competent to decide whether the closure or retrenchment was justified and whether the retrenched workmen should be reinstated or the workers in the establ ishment purported to have been closed should be continued to be paid on the basis that the socalled closure was no closure at all. In the present case the workmen do not ask for reinstatement. They accept the the termination of their services and ask for compensation. The only dispute is about the compensation whether it is to be paid under Section 25F or 25FFF. Item 1 0 of Third Schedule will not cover such a case."

In the above case, the Honourable Supreme Court, while dealing with the role of Labour Court in respect of application under sec.33C(2) and the scope of item 10 of Schedule 3 has held that the provision does not say that all questions arising out of retrenchment of workmen and closure of establishments have to be decided by Industrial Tribunal and if the contention that only the Tribunal could decide the question is accepted then even where retrenchment is not disputed the Labour Court will not be competent to decide the compensation payable to a worker retrenched as it raise the question of jurisdiction.

ii) MANAGING DIRECTOR, ORISSA AGRO INDUSTRIES CORPORATION LIMITED v. PRESIDING OFFICER, LABOUR COURT, ORISSA AND ANOTHER (1984(2) LLJ 21 7) wherein the Orissa High Court has held in para 5 that

" ... it is now settled law that mere denial of the right of an employee does not oust the jurisdiction of the Labour Court which is entitled to make an enquiry into the right which is claimed by the employees. In our view, this proposition of law must also hold good in a case where the status of an employee is denied by the employer; mere denial of the status by the employer

on the ground that the applicant is not its employee will not divest the Labour Court of its jurisdiction to decide the question in a proceeding under Section 33C(2) of the Act."
In this case, the Division Bench of the Orissa High Court has held that it is settled law that mere denial of the right of an employee does not oust the jurisdiction of the Labour Court which is entitled to make an enquiry into the right which is claimed by the employees.

iii) INDIAN OVERSEAS BANK v. I.O.B. STAFF CANTEEN WORKERS' UNION ((2 000) 4 SCC 245) wherein the Honourable Supreme Court has held in paragraphs 18 and 22 that
" The standards and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or concretised into fixed formula(e) for universal application, invariably in all class or category of cases. Though some common standards can be devised, the mere availability of any one or more or their absence in a given case cannot by itself be held to be decisive of the whole issue, since it may depend upon each case to case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby attempt to compartmentalise and peg them into any pigeonhole formulae, to be insisted upon as proof of such relationship...
The canteen services have to be necessarily provided throughout for the staff and the Bank can always utilise the services of the workers for the purpose and there is no justification to deny them of the hard-earned benefits of their service by awarding compensation in lieu of reinstatement."
The above judgment was relied on by the learned counsel appearing for the sixth respondent to say that under Article 226, the High Court cannot interfere with pure findings of fact since re-appreciation of evidence is held impermissible even on the ground of insufficiency of evidence or that another view is possible.
6. The admitted facts are as follows:-
The mode of appointment of respondents 2 to 6 and other employees of the Sivakasi branch of the petitioner-Corporation is same. Under Ex.W7, revised wages were fixed by the Managing Director. Common attendance register was maintained for respondents 2 to 6 and other employees and the same was changed only after the demand made by respondents 2 to 6 to extend the benefit of IV and V pay commission recommendations. Ex.W11 Project Report also substantiates the case of respondents 2 to 6 that the petitioner-Corporation is having branch office at Sivakasi where respondents 2 to 6 are employed and they are liable for transfer throughout Tamilnadu. The Labour Court, after careful consideration of the oral and documentary evidence, has rightly come to the conclusion that respondents 2 to 6 are employees of the petitioner-Corporation.

7. Now we will look into the provisions of the relevant section viz.,

33C(2) of the Industrial Disputes Act:-
"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf of the appropriate Government within a period of not exceeding three months.
Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing extend such period by such further period as he may think fit. "
Section 33C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act") was provided for granting speedy, effective and inexpensive remedy to workmen. No doubt pre-existing right would be maintainable under sec.33C(2) if any money or any right which can be computed in terms of money is claimed by the employee against the employer. The jurisdiction of the Labour Court will not be ousted on the ground that the employer denied the existing of such a right. The petitioner herein has raised an argument that respondents 2 to 6 ought to have approached the Labour Court under Section 10 of the Industrial Disputes Act and after obtaining the declaration, provisions of sec.3 3C(2) could be invoked. In a complicated question relating to any entitlement to the employee, sec.33C(2) may not be proper provision to be invoked for. While determining the scope of sec.33C(2) of the Act, care should be taken to exclude the cases which legitimately fall within the purview of sec.10(1) of the Act.
8. Sec.33C(1) can be made applicable where money is due to a workman under an award or settlement or under Chapter V-A of the Act already calculated and ascertained and therefore, there is no dispute about the computation. Sub-section 2 can be made applicable both to the non-monetary and monetary benefits. It is open to the Labour Court to interpret an award or settlement on which workmen's right rests. The words of limitation used in section 20(2) of the Industrial Disputes Act, 1950 are omitted in sec.33C(2) which shows that the scope of sec.33C(2) of the Act is wider than that of sec.33C(1). Therefore, subsection 1 of sec.33C is confined to claims which are arising under an award or settlement or under Chapter V-A whereas, sub section 2 of sec.33C is not confined to claims arising under an award or settlement or under Chapter V-A of the Act. Proceedings under sec.33C(2) of the Act are more or less identical to execution proceedings. The Labour Court is still competent under section 33C(2) to interpret an award or settlement.
9. The Labour Court found that the driver and accountant of the petitioner-Corporation was extended the benefits of the IV and V pay commission recommendations whereas when it was demanded by respondents 2 to 6, the Corporation started maintaining separate attendance register with the mala fide intention of depriving of their rights.
10. Though it is pleaded by the petitioner-management that Service Rules are not applicable to the workmen of Sivakasi Unit, it is admitted by the Corporation that the employees are subject to transfer all over Tamil Nadu. Hence, the averment that the employees of Sivakasi unit are not governed by Service Rules is untenable. It is the specific case of respondents 2 to 6 that the benefits of IV and V pay commission recommendations are extended to other employees which is not denied by the

petitioner-Corporation.
11. Admittedly, salary of one Paulraj Accountant and one K. Subramanian Driver was fixed as per the recommendations of the IV and V pay commission. Though the Corporation has alleged that they have not entered into any agreement or settlement with the workers to pay salary as per IV and V pay commission recommendations issued under G.O. Ms. No.55/ dated 10.6.1985 and G.O. Ms.No.666 dated 27.6.1989, they have not denied the fact that some of the employees were extended the said benefits. There is no dispute regarding the application of salary fixed by IV and V pay commission recommendations to the Corporation employees, indeed, as rightly pointed out by the Labour Court, salary of Paulraj and Subramaniam was fixed as per the recommendations of IV and V pay commission which was denied to respondents 2 to 6 on extraneous reasons. The pay commission has quantified the salary applicable to respondents 2 to 6. Hence, the Labour Court has rightly exercised its jurisdiction under sec.33C(2) of the Act.
12. On finding of facts recorded by the Labour Court, interference of this court is not permissible. Moreover, I do not find any infirmity in the order passed by the Labour Court. Hence, the writ petition is dismissed. No costs.

27.8.2002.

Index: Yes
Internet: Yes
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To

1. The Presiding Officer,
Labour Court,
Madurai.

A. KULASEKARAN, J

ORDER IN
W.P. No.6655/1995

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